IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2912 OF 2006

In

SUIT NO. 777 OF 1987

Ishwarsingh Hazarasingh since dec
Mrs.Amritkaur wd/o Ishwarsingh
Khalsa and others .. Plaintiffs

versus

M/s.Survin Development Corpn. & Anr... Defendants

...

Mr.A.b. Dubey i/b Bharat Vsiahnawa & Co. for the plaintiff.

Mr.P.A. Sawant for the defendant no.1.

CORAM : D.G. KARNIK,J.

DATED : 12th February 2007.

P.C.:

1. Heard counsel for the parties.

2. Since the motion is taken out in a suit which is listed for hearing and part heard before the

court commissioner, the motion is required to be heard by the Judge hearing the suit under Rule 156 of the Bombay High Court (Original Side) Rules. By consent, motion is taken up for hearing forthwith.

3. This motion is taken out by the plaintiffs with a prayer that the defendants be not permitted to refer to and rely upon the documents which have not been produced on record but which the defendants want to refer to in the cross examination of the plaintiffs' witnesses before the court commissioner.

4. In the suit filed by the plaintiffs, the defendants did not file any written statement. However without their written statement, they have been allowed to cross examine the plaintiffs' witnesses and show to the court even on the basis of the evidence adduced by the plaintiffs, they have no case. The cross examination however is to be limited for the purpose of destroying the plaintiffs' case and not for proving the defendants' case as they have not filed a written statement.

5. Learned counsel for the defendants submitted that the defendants want to show to the plaintiffs'

witness in the cross examination two documents viz (i) copy of the order dated 15th May 1980 passed by Additional Collector and competent authority under Urban Land (Ceiling and Regulation) Act, 1976) {for short "the ULC Act") and (ii) a letter dated 9th April 1987 written by the Estate Manager of the Maharashtra Housing Authority Development Board dated 9th April 1987.

6. It may be noted that the plaintiffs are not the authors of either of the two documents. The documents therefore cannot be referred to for the purpose of contradiction under sectin 145 of the Evidence Act. After having heard counsel for the parties, I am satisfied that the defendants want to refer to these two documents in the cross examination of the plaintiffs not for destroying their case but for the purpose of asserting defendants case. The defendants not having filed the written statement are not entitled to adduce evidence but are only entitled to cross examine the plaintiffs' witnesses only for the purpose of destroying the plaintiffs' case. Since the documents are not seeking to produce the concerned documents for destroying the plaintiffs' case but by way of furthering the defendants' own

defence in an undefended suit without written statement they cannot be allowed to produce these documents before the court commissioner for the purpose of cross examination of the plaintiff. Hence, motion is allowed in terms of prayer clause (a).

D.G. KARNIK, J